IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4585 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARICHANDRA @ HARI PIRBAT MUKHIYA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4585 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution, petitioner who has been detained by the Commissioner of Police, Surat City, Surat vide order dated December 19, 2000 in exercise of powers conferred under section 3 (2) of the Gujarat Prevention of Anti

Social Activities Act, 1985 ('the Act' for short) has prayed to issue an appropriate writ or order quashing and setting aside the impugned order of detention and to pass further relief as deemed fit in the interest of justice.

2. From the averments made in the petition as well as from the impugned order of detention, it is manifest that against the petitioner offences have been registered on 19.11.200 and 20.11.200 and pursuant to the same the petitioner came to be arrested on 22.11.200 and 23.11.2000. As per the grounds of detention the petitioner was in judicial custody at the time of passing of the impugned order and the petitioner was considered to be a "dangerous person" as defined under Section 2 (c) of the Act and the detaining authority has claimed privilege under section 9 (2) of the Act.

3. Mr. PS Gondalia, learned advocate for the petitioner has contended that at the time of passing of the impugned order of detention the petitioner was in judicial custody. Therefore, likelihood of the detenu moving an application for bail cannot be considered as a ground of detention since it is different from the likelihood to be released on bail. The second ground urged by the learned counsel for the petitioner is that there was delay in deciding the representation made by the petitioner so also delay in communicating the decision on the representation which has remained unexplained. It is further contended that the petition of the co-detenu Gopal Muni Mukhiya is allowed by this Court and the order of detention in his case came to be set aside and, therefore, the present petitioner also requires to be set at liberty by allowing this petition on the ground of parity. It is, therefore, urged that on the aforesaid premises the impugned order of detention is required to be quashed and set aside and the petition be allowed.

4. Mr. K.T. Dave, learned AGP has contested this petition and contended that the detaining authority has recorded subjective satisfaction before passing the impugned order. The fact that the petitioner was in judicial custody and the petitioner will move an application for bail was not the only ground which weighed with the detaining authority in recording the order of detention. He, therefore, urged that the petition deserves to be dismissed.

5. I have considered the submissions advanced by the learned advocates appearing for the parties and I have also perused the impugned order recorded by the detaining

authority as well as the order dated August 14, 2001 passed by this Court in Special Civil Application No. 4000 of 2001 by which the petition filed by the co-detenu is allowed and the co-detenu is set at liberty.

6. On the facts and circumstances emerging from the record of the case, I am of the opinion that since the petition filed by the co-detenu has been allowed by setting him at liberty the present petitioner also requires the same treatment on the ground of parity and, therefore, the present petition deserves to be allowed.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated December 19, 2000 is quashed and set aside and the petitioner is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. D.S. is permitted.

23.8.2001. (A.M. Kapadia, J.)

(karan)